in one respect at least, that is, he will do wrong sometimes and if the wrong is slight and trivial, he does not thereby forfeit his life", there might have been more clemency in the present decision.[5] Here was a pedigreed hound worth $350 shot for a chicken worth perhaps fifty cents. If a man found a cat killing his chickens, no one would question his right to shoot it. But suppose his neighbor's valuable horse crushed one of his fowls, would he have the same privilege? While from the record it does not appear that the defendant was aware the hound was pedigreed, the average person knowing that the Russian wolf hound is unusual in size and noble in appearance, would forbear to shoot.

The general rule of law is that there must be an apparent necessity for the defense, honestly believed to be real, and then the acts of defense must themselves be reasonable,—acts beyond reason being excessive.[6] While it is true that the owner could hardly be expected to stand by and mentally calculate the value of the chickens destroyed and await action until such value approximately equaled that of the dog, nevertheless the reasonable, the natural thing to have done would seem to be something just as effective but less drastic, as for example an action in damages against the trespasser's owner.

L. G.

BOOK ACCOUNTS: OPEN AND STATED ACCOUNTS: STATUTE OF LIMITATIONS.—The rule laid down by the courts of this state in regard to open accounts is that when rendered by the merchant and not objected to by the debtor, the assent of the latter is presumed after the lapse of a reasonable time, and the open account is superseded by the stated account or account rendered. Upon this stated account the merchant may bring an action within the two years prescribed by the statute of limitations.[1] However, after the extension of the statute of limitations[2] on open book accounts to four years by the amendment of 1907, it was the general opinion of the merchants that they could sue upon the account any time within the four years, even though they had rendered accounts to which no objection had been made. This opinion, though it appears to have been well founded upon the decisions in other jurisdictions,[3] was shattered by the decision of our Appellate Court in the case

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[5] Anderson v. Smith (1880), 7 Ill. App. 354.

[6] Livermore v. Batchelder (1886), 141 Mass. 179, 5 N. E. 275.

[1] Auzerais v. Naglee (1887), 74 Cal. 60, 15 Pac. 371; Kahn v. Edwards (1888), 75 Cal. 192, 16 Pac. 779, 7 Am. St. Rep. 141; Hendy v. March (1888), 75 Cal. 566, 17 Pac. 702; Baird v. Crank (1893), 98 Cal. 293, 33 Pac. 63; Mayberry v. Cook (1898), 121 Cal. 588, 54 Pac. 95; Converse v. Scott (1902), 137 Cal. 239, 70 Pac. 13; Atkinson v. Golden Gate Tile Co. (1913), 21 Cal. App. 168, 131 Pac. 107.

[2] Cal. Code Civ. Proc., § 337.

[3] Cross v. Moore (1851), 23 Vt. 482; Goings v. Patten (1863), 17 Abb. Pr. (N. Y.) 339; Buxton v. Edwards (1883), 134 Mass. 567; Johnson v. Tyng (1896), 1 App. Div. 610, 37 N. Y. Supp. 516.

of National Lumber Co. v. Tejunga Valley Rock Co.,[4] in which the court proceeded upon the assumption that the account stated superseded and extinguished the original obligation so that it no longer existed as a cause of action.[5]

While this doctrine is not deprived of all of its severity by the recently decided case of *Mercantile Trust Company of San Francisco v. Doe*,[6] yet its scope is modified. The doctrine therein adopted is that the rendering of an account does not necessarily change the character of the items from an open account into a stated account or account rendered. The rendering of the account is only a circumstance which with others may or may not establish an account stated. To turn an open account into an account stated, a statement must have been rendered with a view to ascertaining the balance, and making final adjustment of the matter involved in the account. In other words the effect of the rendering of the account is made to depend upon the intention of the merchant, and that intention is of course a matter of fact to be determined from all the circumstances of the case.

The harshness of the doctrine whereby the original obligation was superseded and extinguished by the account stated, lay in depriving the merchant of his original obligation and in substituting a new contract therefor, when this was opposed to the real intention of the parties. Under the doctrine of the principal case the merchant is still at liberty to render his accounts, and unless in so doing he manifests an intention to arrive at a final determination of the matter involved in the account, he will not lose his right to bring his action upon the original obligation. However, unless the legislature extends the statute of limitations in the case of accounts stated as it has in open accounts, the merchant who renders an account will always be in danger of having it considered as an account stated and hence barred after two years.

T. B. R.

CONSTITUTIONAL LAW: BLUE SKY LEGISLATION: DUE PROCESS: INTERSTATE COMMERCE.—The courts have universally held, in the application of the fourteenth amendment, that no person can be directly deprived of the right to carry on business unless the restriction is justified by the police power. All legislation which is a restraint upon liberty or which deprives a person of property, to be justified under the police power, must secure a recognized social interest.[1] In no case can the personal liberty of a citizen and his rights of property be invaded under the mere guise of police regulation. Wherever the law imposes arbitrary

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[4] (1913), 22 Cal. App. 726, 136 Pac. 508.

[5] 2 Cal. Law Rev., 50.

[6] (Dec. 31, 1914), 20 Cal. App. Dec. 13; rehearing denied Mar. 1, 1915.

[1] Mugler v. Kansas (1887), 123 U. S. 623, 661, 31 L. Ed. 205, 8 Sup. Ct. Rep. 273, 297.